HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

Dated 20th day of June, 2007

W.P.No.25495, 25496, 25562 and 25563 of 1999

W.P.No.25495 of 1999:
Between:

Shri Rakesh Kumar Sood
and five others .. Petitioners

And

The Cantonment Board, Secunderabad
Cantonment, Secunderabad,
Rep. by its Executive Engineer
and another .. Respondents

W.P.No.25496 of 1999:
Between:

Ramesh and another ..
Petitioners

And

The Cantonment Board, Secunderabad
Cantonment, Secunderabad,
Rep. by its Executive Engineer
and another .. Respondents

W.P.No.25562 of 1999:
Between:

Squadron Leader Povuluri Venkata Satya Prasad .. Petitioner

And

The Cantonment Board, Secunderabad
Cantonment, Secunderabad,
Rep. by its Executive Engineer
and another . . Respondents

W.P.No.25563 of 1999:
Between:

P. Sivarama Krishnan .. Petitioner

And

The Cantonment Board, Secunderabad
Cantonment, Secunderabad,
Rep. by its Executive Engineer
and another . . Respondents

COMMON ORDER:

As the point involved in all the four writ petitions is one and the same, they are taken up together for disposal by this common order.

The petitioners assert that they all purchased flats in the residential complex named as "SSNC GOLDEN THRESHOLDS" in S.No.157/1 situated at Thokatta village, Secunderabad Cantonment, Secunderabad and are in possession and enjoyment of them. Now, their grievance is that the 1st respondent-Cantonment Board, without any authority, is trying to dispossess them from their respective flats and also demolish their flats on the ground that the construction of those flats is contrary to the plan sanctioned and in violation of the bye-laws.

This Court, on 10.12.1999, was pleased to direct the respondents not to demolish or dispossess the petitioners from their respective flats in the residential complex during the pendency of the writ petition.

The 1st respondent-Cantonment Board has filed a detailed counter stating that one Deepak Moor Jain and Mohini R. Moor Jain are the owners of the property in question and they applied for construction of a building consisting of stilt plus three floors under Section 179 of the Cantonment Act, 1924 (for brevity "the Act") and the application was approved by the Cantonment Board Resolution on 2.3.1999. Thereafter, when the owners and the developer who is the 2nd respondent herein, made construction contrary to the approved plan, the Cantonment Board was constrained to issue notices on 22.8.1996 to the owners who did not respond, but proceeded with the construction. In the light of the adamant attitude on the part of the owners, the Cantonment Board again passed a Resolution to initiate proceedings under Section 185 of the Act.

Accordingly, a notice to the owners was issued on 22.10.1996 granting 30 days' time to remove the unauthorized constructions. On receipt of the notice, the owners i.e. Deepak Moor Jain and Mohini R. Moor Jain filed O.S.No.1082 of 1996 seeking perpetual injunction and obtained interim injunction, and under the guise of the injunction they completed the construction. However, the suit was dismissed on 30.12.1998, thereafter, in pursuance of the dismissal of the suit, the Cantonment Board issued a notice on 5.11.1999 under Section 256 of the Act directing the owners to remove the unauthorized constructions, however as they did not comply with the directions, the Cantonment Board was constrained to demolish the constructions as they are contrary to the approved plan.

Heard the learned counsel for both the parties and perused the material placed on record.

From the narration of the facts, it is clear that the petitioners are the victims because of the illegal constructions made by the owners i.e. Deepak Moor Jain and Mohini R. Moor Jain in connivance with the developer who is the 2nd respondent. So far as the Cantonment Board is concerned, it acted strictly in accordance with law, but the 2nd respondent and the owners totally acted in utter violation of the provisions of the Cantonment Board. As the application was approved in the name of the owners, the Cantonment Board can issue notices only to the owners, but not to the petitioners herein who are the subsequent purchasers. Moreover, it cannot be said that the petitioners have knowledge that the owners as well as the developer made the construction of their flats contrary to the approved plan sanctioned by the Cantonment Board. It is only because of the lapses on the part of the owners and the developer i.e. 2nd respondent herein, the petitioners have become scapegoats.

In the facts and circumstances of the case, this Court deems it appropriate to direct the petitioners to approach the Cantonment Board and submit their applications seeking regularization of the unauthorized

constructions and the Cantonment Board, in turn, is directed to consider their applications sympathetically and pass appropriate orders regularizing the illegal constructions made in the residential complex as per law by collecting necessary fees. It is made clear that if the petitioners so choose, they can approach the competent Criminal or Civil Court for their redressal against the owners of the flats i.e. Deepak Moor Jain and Mohini R. Moor Jain and the developer i.e. M/s.Sai Neelakanta Construction, the 2nd respondent herein.

With the above observation, these writ petitions are disposed of. No costs.

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20.06.2007

bcj